

AMENDED IN SENATE AUGUST 22, 2013

AMENDED IN SENATE AUGUST 14, 2013

AMENDED IN SENATE JULY 10, 2013

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY JUNE 3, 2013

AMENDED IN ASSEMBLY MAY 21, 2013

AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 300

Introduced by Assembly Member Perea

February 12, 2013

An act to amend, repeal, and add Sections 224.4 and 431 of, and to add and repeal Section 319 ~~to~~, of, the Public Utilities Code, and *to amend Section 41020 of*, to amend, repeal, and add ~~Sections 41020 and Section 41030 of~~, *to add Section 41020.5 to*, and to add and repeal Part 21 (commencing with Section 42000) ~~to~~, and ~~to add and repeal Part 21.1 (commencing with Section 42100) to~~, of Division 2 of, the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 300, as amended, Perea. Telecommunications: prepaid mobile telephony services: state surcharge and fees: local charges collection.

(1) The existing Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for

intrastate telephone service to provide revenues sufficient to fund “911” emergency telephone system costs. Amounts are determined annually by the Office of Emergency Services, and upon collection are paid to the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to be expended for limited purposes, including to pay the Department of General Services for its costs in administration of the “911” emergency telephone number system.

Under existing law, the Public Utilities Commission, or PUC, has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the PUC to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the PUC, except for a railroad corporation. The PUC is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized PUC budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law establishes the state’s telecommunications universal service programs and authorizes the PUC to impose charges for the purpose of funding those programs. Pursuant to this authority, the PUC has established 6 end-user surcharges to fund 6 universal service programs.

This bill would enact the Prepaid Mobile Telephony Service Surcharge Collection Act. The bill would establish a prepaid MTS surcharge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined. The prepaid MTS surcharge would include the emergency telephone users surcharge, as defined, and PUC surcharges, as defined. The bill would require a seller, as defined, to collect the prepaid MTS surcharge, as provided, from a prepaid consumer, as defined, and remit the amounts collected to the State Board of Equalization pursuant to the Fee Collection Procedures Law. The bill would require the board, after deducting its administrative expenses, to deposit the amounts collected for the emergency telephone users surcharge into the Prepaid MTS 911 Account and to deposit the amounts collected for PUC surcharges into the Prepaid MTS PUC Account in

the Prepaid Mobile Telephony Services Surcharge Fund, which the bill would establish in the State Treasury. The bill would require the PUC to annually compute for prepaid mobile telephony services the PUC's reimbursement fee and 6 universal service program fees, to post notice of those fees on its Internet Web site, and to notify the State Board of Equalization *and the Office of Emergency Services* of the amounts *and the computation method used to determine the amounts*, which would be adjusted, as specified, and together would be the PUC surcharges.

The bill would require the PUC, 30 days prior to adopting any adjustment to a reimbursement fee or universal service fee on both postpaid and prepaid intrastate service to prepare a prescribed resolution or other public document proposing the fee adjustment and explaining the calculation of the new fee, as specified, and would require the PUC to make it available to the public and on the PUC's Internet Web site.

The bill would require the Office of Emergency Services to annually compute, as specified, the intrastate portion of the 911 surcharge to be collected on prepaid mobile telephony services to post notice of those charges and to notify the State Board of Equalization of the amount, which would be the emergency telephone users surcharge. The bill would require the Office of Emergency Services to prepare a prescribed summary of the calculation of the proposed 911 surcharge and make the summary available to the public and on its Internet Web site, as specified. Local charges would be computed pursuant to the Local Prepaid Mobile Telephony Services Collection Act, discussed below.

Existing law defines mobile telephony services for purposes of the Public Utilities Code.

This bill would revise that definition and incorporate that definition for purposes of the Prepaid Mobile Telephony Service Surcharge Collection Act.

(2) Existing law generally provides that the legislative body of any charter city may make and enforce all ordinances and regulations with respect to municipal affairs, as provided, including, but not limited to, a utility user tax in that municipality. Existing law generally provides that the legislative body of a city may levy any tax that may be levied by a charter city. Existing law further provides that the board of supervisors of any county may levy a utility user tax on the consumption of, among other things, telephone service, in the unincorporated area of the county.

This bill would, on and after January 1, 2015, suspend the authority of a city, county, or city and county, including any charter city, county,

or city and county, to impose a utility user tax on the consumption of prepaid communications service at the rate specified in an ordinance adopted pursuant to existing law, and would instead require the utility user tax rate to be applied during that period under any ordinance to be at specified tiered rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act. In addition, the bill would, on or after January 1, 2015, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, on access to communication services or access to local “911” emergency telephone systems, in the city, county, or city and county at the rate as specified in an ordinance adopted pursuant to existing law, and would instead require the charge rate to be applied during that period under any ordinance to be at specified rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act. This bill would specify that a change in a utility user tax rate or access charge rate resulting from either the rate limitations or the end of the suspension period is not subject to voter approval under either statute or Article XIII C of the California Constitution. This bill would require these local charges imposed by a city, county, or a city and county be administered and collected by the State Board of Equalization, deposited in the Local Charges for Prepaid Mobile Telephony Services Fund, which this bill would create, and transmitted to the city, county, or a city and county, as provided.

This bill would allow a consumer to rebut the presumed location of a retail transaction for purposes of the collection of the local charges by filing a claim and declaration under penalty of perjury.

By expanding the crime of perjury, this bill would impose a state-mandated local program.

(3) The bill would repeal these provisions on January 1, ~~2020~~ 2018.

(4) The Fee Collection Procedures Law makes a violation of any provision of the law, or of certain requirements imposed by the board pursuant to the law, a crime.

By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 224.4 of the Public Utilities Code is
2 amended to read:
3 224.4. (a) “Mobile data service” means the delivery of
4 nonvoice information over a radio band licensed by the Federal
5 Communications Commission, to a mobile device and includes
6 nonvoice information communicated to a mobile telephony services
7 handset, nonvoice information communicated to handheld personal
8 digital assistant (PDA) devices and laptop computers, and mobile
9 paging service carriers offering services on pagers and two-way
10 messaging devices. “Mobile data service” includes mobile
11 broadband service offering connectivity over a radio band licensed
12 by the Federal Communications Commission. Unless specified to
13 the contrary, “mobile data service” does not include nonvoice
14 information communicated through a wireless local area network
15 operating in the unlicensed radio bands, commonly known as a
16 “Wi-Fi” network.
17 (b) “Mobile paging service” means the transmission of coded
18 radio signals over a radio band licensed by the Federal
19 Communications Commission, for the purpose of activating
20 specific small radio receivers designed to be carried by a person
21 and to give an aural, visual, or tactile indication when activated.
22 (c) “Mobile satellite telephone service” means voice
23 communication to end users over a mobile satellite service
24 involving the provision of commercial mobile radio service,
25 pursuant to Parts 20 and 25 of Title 47 of the Code of Federal
26 Regulations.
27 (d) “Mobile telephony service” means commercially available
28 interconnected mobile phone services that provide voice
29 communication access to the public switched telephone network
30 (PSTN) by way of mobile communication devices employing
31 radiowave technology to transmit calls, including cellular

1 radiotelephone, broadband Personal Communications Services
2 (PCS), digital Specialized Mobile Radio (SMR), or another radio
3 band licensed by the Federal Communications Commission.
4 “Mobile telephony services” does not include mobile satellite
5 telephone services or mobile data services used exclusively for
6 the delivery of nonvoice information to a mobile device.

7 (e) This section shall remain in effect only until January 1, ~~2020~~,
8 2018, and as of that date is repealed, unless a later enacted statute,
9 that is enacted before January 1, ~~2020~~, 2018, deletes or extends
10 that date.

11 SEC. 2. Section 224.4 is added to the Public Utilities Code, to
12 read:

13 224.4. (a) “Mobile data service” means the delivery of
14 nonvoice information to a mobile device and includes nonvoice
15 information communicated to a mobile telephony services handset,
16 nonvoice information communicated to handheld personal digital
17 assistant (PDA) devices and laptop computers, and mobile paging
18 service carriers offering services on pagers and two-way messaging
19 devices. Unless specified, “mobile data service” does not include
20 nonvoice information communicated through a wireless local area
21 network operating in the unlicensed radio bands, commonly known
22 as a “Wi-Fi” network.

23 (b) “Mobile paging service” means the transmission of coded
24 radio signals for the purpose of activating specific small radio
25 receivers designed to be carried by a person and to give an aural,
26 visual, or tactile indication when activated.

27 (c) “Mobile satellite telephone service” means voice
28 communication to end users over a mobile satellite service
29 involving the provision of commercial mobile radio service,
30 pursuant to Parts 20 and 25 of Title 47 of the Code of Federal
31 Regulations.

32 (d) “Mobile telephony service” means commercially available
33 interconnected mobile phone services that provide access to the
34 public switched telephone network (PSTN) via mobile
35 communication devices employing radiowave technology to
36 transmit calls, including cellular radiotelephone, broadband
37 Personal Communications Services (PCS), and digital Specialized
38 Mobile Radio (SMR). “Mobile telephony services” does not
39 include mobile satellite telephone services or mobile data services

1 used exclusively for the delivery of nonvoice information to a
2 mobile device.

3 (e) This section shall become operative on January 1, ~~2020~~.
4 ~~2018~~.

5 SEC. 3. Section 319 is added to the Public Utilities Code, to
6 read:

7 319. (a) The commission shall annually, on or before October
8 1 of each year, commencing October 1, 2014, compute a
9 reimbursement fee as a percentage of the sales price for prepaid
10 mobile telephony services, to be effective on January 1 of the
11 following year and to be collected and remitted pursuant to the
12 Prepaid Mobile Telephony Services Surcharge Collection Act (Part
13 21 (commencing with Section 42000) of Division 2 of the Revenue
14 and Taxation Code). On or before October ~~15~~ 8 of each year,
15 commencing October ~~15~~ 8, 2014, the commission shall post notice
16 of the reimbursement fee on its Internet Web site and notify *both*
17 *the Office of Emergency Services and the State Board of*
18 *Equalization of this information as well as the computation method*
19 *used to determine the reimbursement fee.*

20 (b) The commission shall annually, on or before October 1 of
21 each year, commencing October 1, 2014, compute the cumulative
22 amount of the telecommunications universal service surcharges
23 as a percentage of the sales price for prepaid mobile telephony
24 services, to be effective on January 1 of the following year and to
25 be collected and remitted pursuant to the Prepaid Mobile Telephony
26 Services Surcharge Collection Act (Part 21 (commencing with
27 Section 42000) of Division 2 of the Revenue and Taxation Code).
28 On or before October ~~15~~ 8 of each year, commencing October ~~15~~,
29 8, 2014, the commission shall post notice of the cumulative
30 surcharge on its Internet Web site and notify *both the Office of*
31 *Emergency Services and the State Board of Equalization of this*
32 *information as well as the computation method used to determine*
33 *the cumulative surcharge.*

34 (c) (1) Except for the fees computed pursuant to subdivisions
35 (a) and (b), this section neither restricts the commission's authority
36 to adjust reimbursement fees or universal service fees nor requires
37 that they only be adjusted once annually.

38 (2) In annually computing reimbursement fees and universal
39 service fees to be collected and remitted to the commission
40 pursuant to this section, the commission shall adjust the fees to

1 account for any past overcollection of fees from prepaid mobile
2 telephony service customers resulting from a reduction in fees
3 made subsequent to December 31 of the previous year.

4 (3) In annually computing reimbursement fees and universal
5 service fees to be collected and remitted to the commission
6 pursuant to this section, the commission may adjust the fees to
7 account for any past undercollection of fees from prepaid mobile
8 telephony service customers resulting from an increase in fees
9 made subsequent to December 31 of the previous year.

10 (4) If both upward and downward adjustments are made to
11 reimbursement fees and universal service fees subsequent to
12 December 31, the commission may adjust how collections are
13 deposited into the reimbursement and universal service accounts
14 so that overcollections or undercollections are minimized.

15 (5) It is the intent of the Legislature that reimbursement fees
16 and universal service fees be applied, as much as possible, in a
17 competitively neutral manner that does not favor either prepaid or
18 postpaid payment for mobile telephony services, and that, over
19 time, collections of state charges from prepaid and postpaid mobile
20 telephony service customers balance out so that neither pay a
21 disproportionate amount.

22 (6) At least 30 days prior to adopting any adjustment to a
23 reimbursement fee or universal service fee to be collected and
24 remitted to the commission on both postpaid and prepaid intrastate
25 service, the commission shall prepare a resolution or other public
26 document proposing the fee adjustment and explaining the
27 calculation of the fee. The commission shall make the resolution
28 or other public document available to the public and on the
29 commission's Internet Web site and it shall include all of the
30 following:

31 (A) The prior year revenues from the fee, including, but not
32 limited to, revenues from prepaid service.

33 (B) Projected expenses and revenues from all sources, including,
34 but not limited to, prepaid service, for the purposes of the fee.

35 (C) The rationale for adjustment to the reimbursement fee or
36 universal service fee, including, but not limited to, all impacts from
37 prepaid service surcharge collection.

38 (d) The commission shall have enforcement authority to ensure
39 the proper remittances over retail transactions, pursuant to the
40 Prepaid Mobile Telephony Services Surcharge Collection Act (Part

21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code), where the prepaid mobile telephony services (prepaid MTS) provider is also the seller. The commission shall collaborate with the State Board of Equalization in exercising its enforcement authority pursuant to this subdivision.

(e) (1) Notwithstanding any amounts collected and remitted to the commission pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code), wireless carriers providing prepaid mobile telephony service shall remit to the commission the fee established for telephone corporations pursuant to subdivision (a) of Section 431 on the intrastate portion of the revenues received for prepaid mobile telephony service through December 31, 2015.

(2) Notwithstanding any amounts collected and remitted to the commission pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act (Part 21 (commencing with Section 42000) of Division 2 of the Revenue and Taxation Code), wireless carriers providing prepaid mobile telephony service shall remit to the commission the telecommunications universal service surcharges established for telephone corporations on the intrastate portion of the revenues received for prepaid mobile telephony service through December 31, 2015.

(f) (1) This section does not relieve wireless carriers providing prepaid mobile telephony service of their continuing obligation to report prepaid mobile telephony service revenues to the commission in a manner prescribed by the commission.

(2) When reporting prepaid mobile telephony service revenues to the commission, wireless carriers providing prepaid mobile telephony service shall report the intrastate revenue portion subject to the reimbursement fee and the telecommunications universal service surcharges, as well as total state wireless revenue.

~~(e)~~

(g) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2020~~, 2018, deletes or extends that date.

SEC. 4. Section 431 of the Public Utilities Code is amended to read:

1 431. (a) The commission shall annually determine a fee to be
2 paid by every electrical, gas, telephone, telegraph, water, sewer
3 system, and heat corporation and every other public utility
4 providing service directly to customers or subscribers and subject
5 to the jurisdiction of the commission other than a railroad, except
6 as otherwise provided in Article 2 (commencing with Section 421),
7 for common carriers and related businesses, and as otherwise
8 provided in Section 319, for prepaid mobile telephony service
9 providers.

10 (b) The annual fee shall be established to produce a total amount
11 equal to that amount established in the authorized commission
12 budget for the same year, including adjustments for increases in
13 employee compensation, other increases appropriated by the
14 Legislature, and an appropriate reserve to regulate public utilities
15 less the amount to be paid from special accounts or funds pursuant
16 to Section 402, reimbursements, federal funds, and any other
17 revenues, and the amount of unencumbered funds from the
18 preceding year.

19 (c) This article shall not apply to any electrical cooperative as
20 defined in Chapter 5 (commencing with Section 2776) of Part 2.

21 (d) This section shall remain in effect only until January 1, ~~2020~~,
22 ~~2018~~, and as of that date is repealed, unless a later enacted statute,
23 that is enacted before January 1, ~~2020~~, ~~2018~~, deletes or extends
24 that date.

25 SEC. 5. Section 431 is added to the Public Utilities Code, to
26 read:

27 431. (a) The commission shall annually determine a fee to be
28 paid by every electrical, gas, telephone, telegraph, water, sewer
29 system, and heat corporation and every other public utility
30 providing service directly to customers or subscribers and subject
31 to the jurisdiction of the commission other than a railroad, except
32 as otherwise provided in Article 2 (commencing with Section 421).

33 (b) The annual fee shall be established to produce a total amount
34 equal to that amount established in the authorized commission
35 budget for the same year, including adjustments for increases in
36 employee compensation, other increases appropriated by the
37 Legislature, and an appropriate reserve to regulate public utilities
38 less the amount to be paid from special accounts or funds pursuant
39 to Section 402, reimbursements, federal funds, and any other

1 revenues, and the amount of unencumbered funds from the
2 preceding year.

3 (c) This article shall not apply to any electrical cooperative as
4 defined in Chapter 5 (commencing with Section 2776) of Part 2.

5 (d) On and after January 1, 1985, this article shall apply to
6 radiotelephone utilities as defined in Section 4902 as those
7 provisions read on December 31, 1984.

8 (e) This section shall become operative on January 1, ~~2020~~.
9 ~~2018~~.

10 SEC. 6. Section 41020 of the Revenue and Taxation Code is
11 amended to read:

12 41020. (a) A surcharge is hereby imposed on amounts paid
13 by every person in the state for both of the following:

14 (1) (A) Intrastate telephone communication service in this state.
15 The

16 (B) *Notwithstanding subparagraph (A), on and after January*
17 *1, 2016, and before January 1, 2018, in lieu of the surcharge*
18 *imposed under subparagraph (A), a* surcharge shall be imposed
19 on amounts paid for prepaid mobile-telecommunications ~~telephony~~
20 services pursuant to the Prepaid Mobile Telephony Services
21 Surcharge Collection Act (Part 21 (commencing with Section
22 42000)), and the calculation of the intrastate portion of charges
23 for prepaid mobile telecommunications services shall be made
24 pursuant to paragraph (1) of subdivision (b) of Section 42010.

25 (2) VoIP service that provides access to the “911” emergency
26 system by utilizing the digits 9-1-1 by any service user in this state
27 commencing on January 1, 2009. The surcharge shall not apply to
28 charges for VoIP service where any point of origin or destination
29 is outside of this state.

30 (b) (1) Notwithstanding Section 41025, charges not subject to
31 the surcharge may be calculated by a service supplier based upon
32 books and records kept in the regular course of business, and, for
33 purposes of calculating the interstate revenue portion not subject
34 to the surcharge, a service supplier may also choose a reasonable
35 and verifiable method from the following:

36 (A) Books and records kept in the regular course of business.

37 (B) Traffic or call pattern studies representative of the service
38 supplier’s business within California.

39 (C) For VoIP service only, the VoIP safe harbor factor
40 established by the FCC to be used to calculate the service supplier’s

1 contribution to the federal Universal Service Fund. The FCC safe
2 harbor factor in effect for VoIP service on September 1 of each
3 year shall apply for the period of January 1 to December 31,
4 inclusive, of the next succeeding calendar year for purposes of this
5 method. At the time the FCC establishes a safe harbor factor for
6 the federal Universal Service Fund for VoIP service that is greater
7 than 75 percent for interstate revenue or abolishes the safe harbor
8 factor applicable to VoIP service, this method shall become void
9 and of no effect, in which case a VoIP service supplier may use
10 an alternative method approved in advance by the board, which
11 shall be available to all VoIP service suppliers. The FCC safe
12 harbor factor applicable to VoIP service, as described in this
13 subparagraph, is used solely as a mechanism to calculate the
14 charges not subject to the surcharge for VoIP service and is not
15 necessarily reflective of the intrastate portion of VoIP service. The
16 use of the FCC safe harbor factor authorized by this subdivision
17 shall not be interpreted to permit application of any intrastate
18 requirement, other than the surcharge imposed under this part,
19 upon VoIP service suppliers.

20 (2) Any method chosen by a service supplier shall remain in
21 effect for at least one calendar year.

22 (3) If a service supplier reasonably relies upon books and
23 records kept in the regular course of business or any documentation
24 that satisfies the reasonable and verifiable method, then the service
25 supplier's determination of the portion of the billed amount
26 attributable to services not subject to the surcharge shall be
27 rebuttably presumed to be correct. The service supplier's choice
28 of books and records or other method and surcharge billing practice
29 shall also be rebuttably presumed to be fair and legal business
30 practices.

31 (4) It is the intent of the Legislature that the provisions of
32 subparagraph (C) shall not be considered to be a precedent for the
33 application of the surcharge or any other tax or fee where a person
34 is required to collect a tax or fee imposed upon another.

35 (c) The surcharge imposed shall be at the rate of one-half of 1
36 percent of the charges made for the services to and including
37 November 1, 1982, and thereafter at a rate fixed pursuant to Article
38 2 (commencing with Section 41030).

39 (d) The surcharge shall be paid by the service user as hereinafter
40 provided.

1 (e) The surcharge imposed shall not apply to either of the
2 following:

3 (1) In accordance with the Mobile Telecommunications Sourcing
4 Act (Public Law 106-252), which is incorporated herein by
5 reference, to any charges for mobile telecommunications services
6 billed to a customer where those services are provided, or deemed
7 provided, to a customer whose place of primary use is outside this
8 state. Mobile telecommunications services shall be deemed
9 provided by a customer's home service provider to the customer
10 if those services are provided in a taxing jurisdiction to the
11 customer, and the charges for those services are billed by or for
12 the customer's home service provider.

13 (2) To any charges for VoIP service billed to a customer where
14 those services are provided to a customer whose place of primary
15 use of VoIP service is outside this state.

16 (f) For purposes of this section:

17 (1) "Charges for mobile telecommunications services" means
18 any charge for, or associated with, the provision of commercial
19 mobile radio service, as defined in Section 20.3 of Title 47 of the
20 Code of Federal Regulations, as in effect on June 1, 1999, or any
21 charge for, or associated with, a service provided as an adjunct to
22 a commercial mobile radio service, that is billed to the customer
23 by or for the customer's home service provider, regardless of
24 whether individual transmissions originate or terminate within the
25 licensed service area of the home service provider.

26 (2) "Customer" means (A) the person or entity that contracts
27 with the home service provider for mobile telecommunications
28 services, or with a VoIP service provider for VoIP service, or (B)
29 if the end user of mobile telecommunications services or VoIP
30 service is not the contracting party, the end user of the mobile
31 telecommunications service or VoIP service. This paragraph applies
32 only for the purpose of determining the place of primary use. The
33 term "customer" does not include (A) a reseller of mobile
34 telecommunications service or VoIP communication service, or
35 (B) a serving carrier under an arrangement to serve the mobile
36 customer outside the home service provider's licensed service
37 area.

38 (3) "Home service provider" means the facilities-based carrier
39 or reseller with which the customer contracts for the provision of
40 mobile telecommunications services.

1 (4) “Licensed service area” means the geographic area in which
2 the home service provider is authorized by law or contract to
3 provide commercial mobile radio service to the customer.

4 (5) “Mobile telecommunications service” means commercial
5 mobile radio service, as defined in Section 20.3 of Title 47 of the
6 Code of Federal Regulations, as in effect on June 1, 1999.

7 (6) “Place of primary use” means the street address
8 representative of where the customer’s use of the mobile
9 telecommunications service or VoIP service primarily occurs, that
10 must be:

11 (A) The residential street address or the primary business street
12 address of the customer.

13 (B) With respect to mobile telecommunications service, within
14 the licensed service area of the home service provider.

15 (7) (A) “Reseller” means a provider who purchases
16 telecommunications services or VoIP service from another
17 telecommunications service provider or VoIP service and then
18 resells the services, or uses the services as a component part of,
19 or integrates the purchased services into, a mobile
20 telecommunications service or VoIP service.

21 (B) “Reseller” does not include a serving carrier with which a
22 home service provider arranges for the services to its customers
23 outside the home service provider’s licensed service area.

24 (8) “Serving carrier” means a facilities-based carrier providing
25 mobile telecommunications service to a customer outside a home
26 service provider’s or reseller’s licensed area.

27 (9) “Taxing jurisdiction” means any of the several states, the
28 District of Columbia, or any territory or possession of the United
29 States, any municipality, city, county, township, parish,
30 transportation district, or assessment jurisdiction, or any other
31 political subdivision within the territorial limits of the United States
32 with the authority to impose a tax, charge, or fee.

33 (10) “VoIP service provider” means that provider of VoIP
34 service with whom the end user customer contracts for the
35 provision of VoIP services for the customer’s own use and not for
36 resale.

37 ~~(g) This section shall remain in effect only until January 1, 2020,~~
38 ~~and as of that date is repealed, unless a later enacted statute, that~~
39 ~~is enacted before January 1, 2020, deletes or extends that date.~~

SEC. 7. ~~Section 41020 is added to the Revenue and Taxation Code, to read:~~

~~41020. (a) A surcharge is hereby imposed on amounts paid by every person in the state for both of the following:~~

~~(1) Intrastate telephone communication service in this state commencing on July 1, 1977.~~

~~(2) VoIP service that provides access to the “911” emergency system by utilizing the digits 9-1-1 by any service user in this state commencing on January 1, 2009. The surcharge shall not apply to charges for VoIP service where any point of origin or destination is outside of this state.~~

~~(b) (1) Notwithstanding Section 41025, charges not subject to the surcharge may be calculated by a service supplier based upon books and records kept in the regular course of business, and, for purposes of calculating the interstate revenue portion not subject to the surcharge, a service supplier may also choose a reasonable and verifiable method from the following:~~

~~(A) Books and records kept in the regular course of business.~~

~~(B) Traffic or call pattern studies representative of the service supplier’s business within California.~~

~~(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier’s contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for VoIP service on September 1 of each year shall apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year for purposes of this method. At such time as the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor authorized by this subdivision shall not be interpreted to permit application of any intrastate~~

1 requirement, other than the surcharge imposed under this part,
2 upon VoIP service suppliers.

3 (2) Any method chosen by a service supplier shall remain in
4 effect for at least one calendar year.

5 (3) If a service supplier reasonably relies upon books and records
6 kept in the regular course of business or any documentation that
7 satisfies the reasonable and verifiable method, then the service
8 supplier's determination of the portion of the billed amount
9 attributable to services not subject to the surcharge shall be
10 rebuttably presumed to be correct. The service supplier's choice
11 of books and records or other method and surcharge billing practice
12 shall also be rebuttably presumed to be fair and legal business
13 practices.

14 (4) It is the intent of the Legislature that the provisions of
15 subparagraph (C) shall not be considered to be a precedent for the
16 application of the surcharge or any other tax or fee where a person
17 is required to collect a tax or fee imposed upon another.

18 (e) The surcharge imposed shall be at the rate of one-half of 1
19 percent of the charges made for such services to and including
20 November 1, 1982, and thereafter at a rate fixed pursuant to Article
21 2 (commencing with Section 41030).

22 (d) The surcharge shall be paid by the service user as hereinafter
23 provided.

24 (e) The surcharge imposed shall not apply to either of the
25 following:

26 (1) In accordance with the Mobile Telecommunications Sourcing
27 Act (Public Law 106-252), which is incorporated herein by
28 reference, to any charges for mobile telecommunications services
29 billed to a customer where those services are provided, or deemed
30 provided, to a customer whose place of primary use is outside this
31 state. Mobile telecommunications services shall be deemed
32 provided by a customer's home service provider to the customer
33 if those services are provided in a taxing jurisdiction to the
34 customer, and the charges for those services are billed by or for
35 the customer's home service provider.

36 (2) To any charges for VoIP service billed to a customer where
37 those services are provided to a customer whose place of primary
38 use of VoIP service is outside this state.

39 (f) For purposes of this section:

1 ~~(1) “Charges for mobile telecommunications services” means~~
2 ~~any charge for, or associated with, the provision of commercial~~
3 ~~mobile radio service, as defined in Section 20.3 of Title 47 of the~~
4 ~~Code of Federal Regulations, as in effect on June 1, 1999, or any~~
5 ~~charge for, or associated with, a service provided as an adjunct to~~
6 ~~a commercial mobile radio service, that is billed to the customer~~
7 ~~by or for the customer’s home service provider, regardless of~~
8 ~~whether individual transmissions originate or terminate within the~~
9 ~~licensed service area of the home service provider.~~

10 ~~(2) “Customer” means (A) the person or entity that contracts~~
11 ~~with the home service provider for mobile telecommunications~~
12 ~~services, or with a VoIP service provider for VoIP service, or (B)~~
13 ~~if the end user of mobile telecommunications services or VoIP~~
14 ~~service is not the contracting party, the end user of the mobile~~
15 ~~telecommunications service or VoIP service. This paragraph applies~~
16 ~~only for the purpose of determining the place of primary use. The~~
17 ~~term “customer” does not include (A) a reseller of mobile~~
18 ~~telecommunications service or VoIP communication service, or~~
19 ~~(B) a serving carrier under an arrangement to serve the mobile~~
20 ~~customer outside the home service provider’s licensed service~~
21 ~~area.~~

22 ~~(3) “Home service provider” means the facilities-based carrier~~
23 ~~or reseller with which the customer contracts for the provision of~~
24 ~~mobile telecommunications services.~~

25 ~~(4) “Licensed service area” means the geographic area in which~~
26 ~~the home service provider is authorized by law or contract to~~
27 ~~provide commercial mobile radio service to the customer.~~

28 ~~(5) “Mobile telecommunications service” means commercial~~
29 ~~mobile radio service, as defined in Section 20.3 of Title 47 of the~~
30 ~~Code of Federal Regulations, as in effect on June 1, 1999.~~

31 ~~(6) “Place of primary use” means the street address~~
32 ~~representative of where the customer’s use of the mobile~~
33 ~~telecommunications service or VoIP service primarily occurs, that~~
34 ~~must be:~~

35 ~~(A) The residential street address or the primary business street~~
36 ~~address of the customer.~~

37 ~~(B) With respect to mobile telecommunications service, within~~
38 ~~the licensed service area of the home service provider.~~

39 ~~(7) (A) “Reseller” means a provider who purchases~~
40 ~~telecommunications services or VoIP service from another~~

1 telecommunications service provider or VoIP service and then
2 resells the services, or uses the services as a component part of,
3 or integrates the purchased services into, a mobile
4 telecommunications service or VoIP service.

5 (B) “Reseller” does not include a serving carrier with which a
6 home service provider arranges for the services to its customers
7 outside the home service provider’s licensed service area.

8 (8) “Serving carrier” means a facilities-based carrier providing
9 mobile telecommunications service to a customer outside a home
10 service provider’s or reseller’s licensed area.

11 (9) “Taxing jurisdiction” means any of the several states, the
12 District of Columbia, or any territory or possession of the United
13 States, any municipality, city, county, township, parish,
14 transportation district, or assessment jurisdiction, or any other
15 political subdivision within the territorial limits of the United States
16 with the authority to impose a tax, charge, or fee.

17 (10) “VoIP service provider” means that provider of VoIP
18 service with whom the end user customer contracts for the
19 provision of VoIP services for the customer’s own use and not for
20 resale.

21 (g) The amendments made to this section by the act that added
22 this subdivision shall become operative upon the enactment of that
23 act, except that subdivisions (a) and (b) of this section, as amended,
24 shall become operative on January 1, 2009.

25 (h)

26 —This section shall become operative on January 1, 2020.

27 SEC. 7. Section 41020.5 is added to the Revenue and Taxation
28 Code, to read:

29 41020.5. Notwithstanding any other provision of this part, on
30 and after January 1, 2015, and before January 1, 2016, a service
31 supplier shall not collect the surcharge imposed under this part
32 on the intrastate portion of charges made for prepaid mobile
33 telecommunications services, and the service supplier shall remit
34 to the board an amount equal to the amount of the surcharge that
35 would have otherwise been collected, reported, and remitted to
36 the board under this part on the intrastate portion of the charges
37 made for prepaid mobile telecommunications services.

38 SEC. 8. Section 41030 of the Revenue and Taxation Code is
39 amended to read:

1 41030. (a) The Office of Emergency Services shall determine
2 annually, on or before October 1, to be effective on January 1 of
3 the following year, a surcharge pursuant to subdivision (b) that it
4 estimates will produce sufficient revenue to fund the current fiscal
5 year's 911 costs.

6 *(b) (1) Commencing with the calculation made on October 1,*
7 *2013, the surcharge rate shall be determined by dividing the costs*
8 *(including incremental costs) the Office of Emergency Services*
9 *estimates for the current fiscal year of 911 plans approved pursuant*
10 *to Section 53115 of the Government Code, less the available*
11 *balance in the State Emergency Telephone Number Account in the*
12 *General Fund, by its estimate of the charges for intrastate*
13 *telephone communications services and VoIP service to which the*
14 *surcharge will apply for the period of January 1, 2014 to December*
15 *31, 2014, inclusive, but in no event shall the surcharge rate in any*
16 *year be greater than three-quarters of 1 percent or less than*
17 *one-half of 1 percent.*

18 ~~(b) The~~
19 *(2) Commencing with the calculation made October 1, 2014,*
20 *to be effective January 1, 2015, the surcharge shall be determined*
21 *by dividing the costs (including incremental costs) the Office of*
22 *Emergency Services estimates for the current fiscal year of 911*
23 *plans approved pursuant to Section 53115 of the Government*
24 *Code, less the available balance in the State Emergency Telephone*
25 *Number Account in the General Fund, by its estimate of the charges*
26 *for intrastate telephone communications services, the interstate*
27 *intrastate portion of prepaid telecommunications telephony*
28 *services, and VoIP service to which the surcharge will apply for*
29 *the period of January 1 to December 31, inclusive, of the next*
30 *succeeding calendar year, but in no event shall the surcharge rate*
31 *in any year be greater than three-quarters of 1 percent or less than*
32 *one-half of 1 percent. In making its computation of the charges*
33 *that are applicable to the intrastate portion of prepaid mobile*
34 *telecommunications telephony services, the Office of Emergency*
35 *Services shall use 78.5 percent of the total charges as being the*
36 *intrastate portion of the charges. the computation method developed*
37 *by the Public Utilities Commission and reported to the Office of*
38 *Emergency Services pursuant to subdivisions (a) and (b) of Section*
39 *319 of the Public Utilities Code.*

(c) The Office of Emergency Services shall notify the board of the surcharge amount *collected pursuant to this part and the surcharge amount applicable to prepaid mobile telecommunications services* by October 15 of each ~~year, commencing with October 15, 2014. The board shall utilize the surcharge amount to calculate the emergency telephone users surcharge component of the prepaid MTS surcharge, as defined in subdivision (f) of Section 42004, pursuant to paragraph (1) of subdivision (b) and subdivision (d) of Section 42010.~~ *year.*

(d) At least 30 days prior to determining the surcharge pursuant to subdivision (a), the Office of Emergency Services shall prepare a summary of the calculation of the proposed surcharge and make it available to the public and on its Internet Web site. The summary shall contain all of the following:

(1) The prior year revenues to fund 911 costs, including, but not limited to, revenues from prepaid service.

(2) Projected expenses and revenues from all sources, including, but not limited to, prepaid service to fund 911 costs.

(3) The rationale for adjustment to the surcharge determined pursuant to subdivision (b), including, but not limited to, all impacts from prepaid service surcharge collection.

(e) This section shall remain in effect only until January 1, ~~2020, 2018~~, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2020, 2018~~, deletes or extends that date.

SEC. 9. Section 41030 is added to the Revenue and Taxation Code, to read:

41030. (a) The Office of Emergency Services shall determine annually, on or before October 1, a surcharge rate that it estimates will produce sufficient revenue to fund the current fiscal year's 911 costs. The surcharge rate shall be determined by dividing the costs (including incremental costs) the Office of Emergency Services estimates for the current fiscal year of 911 plans approved pursuant to Section 53115 of the Government Code, less the available balance in the State Emergency Telephone Number Account in the General Fund, by its estimate of the charges for intrastate telephone communications services and VoIP service to which the surcharge will apply for the period of January 1 to December 31, inclusive, of the next succeeding calendar year, but

1 in no event shall such surcharge rate in any year be greater than
2 three-quarters of 1 percent or less than one-half of 1 percent.

3 *(b) At least 30 days prior to determining the surcharge pursuant*
4 *to subdivision (a), the Office of Emergency Services shall prepare*
5 *a summary of the calculation of the proposed surcharge and make*
6 *it available to the public and on its Internet Web site. The summary*
7 *shall contain all of the following:*

8 *(1) The prior year's revenues to fund 911 costs.*

9 *(2) Projected expenses and revenues from all sources.*

10 *(3) The rationale for adjustment to the surcharge determined*
11 *pursuant to subdivision (b), including, but not limited to, all*
12 *impacts from prepaid service surcharge collection.*

13 ~~(b)~~

14 *(c) This section shall become operative on January 1, 2020.*
15 *2018.*

16 SEC. 10. Part 21 (commencing with Section 42000) is added
17 to Division 2 of the Revenue and Taxation Code, to read:

18
19 **PART 21. PREPAID MOBILE TELEPHONY SERVICES**
20 **SURCHARGE COLLECTION ACT**

21
22 **CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**

23
24 42000. This part shall be known, and may be cited, as the
25 Prepaid Mobile Telephony Services Surcharge Collection Act.

26 42002. The Legislature finds and declares all of the following:

27 (a) Maintaining effective and efficient communications services,
28 911 emergency systems, communications-related public policy
29 programs to promote universal service, and various local programs
30 across the state benefits all persons with access to the
31 telecommunications system.

32 (b) Providers of end-use communications services, including
33 providers of mobile voice telecommunications services, which the
34 Federal Communications Commission terms mobile telephony
35 service, are required to collect and remit communications taxes,
36 fees, and surcharges on various types of communication service
37 revenues, as provided by existing state or local law.

38 (c) Consumers purchase prepaid mobile telephony services at
39 a wide variety of retail locations and other distribution channels,
40 as well as through service providers.

(d) Prepaid mobile telephony services are an important and growing segment of the communications industry. Prepaid mobile telephony services are often the only means by which persons with low incomes can obtain limited access to the telecommunications system.

(e) To ensure equitable contributions from end-use consumers of postpaid and prepaid mobile telephony services in this state, there should be standardization with respect to the method used to collect communications taxes, fees, and surcharges from end-use consumers of prepaid mobile telephony services.

(f) Prepaid mobile telephony services are frequently sold by a third-party retailer that is not the provider of mobile telephony services, and collecting taxes, fees, and surcharges from prepaid consumers of mobile telephony services at the time of the retail transaction is necessary and the most efficient and competitively neutral means of collection.

(g) An equitable distribution mechanism is necessary to ensure that utility user taxes and other telecommunication charges are collected on behalf of cities and counties and are properly distributed to those jurisdictions.

42004. For purposes of this part, the following terms have the following meanings:

(a) “Board” means the State Board of Equalization.

(b) “Emergency telephone users surcharge” means surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) to be collected from prepaid consumers of mobile telephony services.

(c) “In this state” means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

(d) “Local charges” means those charges described in subdivision (a) of Section 42101.

(e) “Local jurisdiction” or “local agency” means a city, county, or city and county, which includes a charter city, county, or city and county.

(f) “Mobile data service” has the same meaning as defined in Section 224.4 of the Public Utilities Code.

(g) “Mobile telephony service” ~~has the same meanings or~~ *“MTS” means commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations, and*

1 *shall include mobile telephony* as defined in Section 224.4 of the
2 Public Utilities Code.

3 (h) “Person” includes any individual, firm, partnership, joint
4 venture, limited liability company, association, social club, fraternal
5 organization, corporation, estate, trust, business trust, receiver,
6 assignee for the benefit of creditors, trustee, trustee in bankruptcy,
7 syndicate, the United States, this state, any city, county, city and
8 county, municipality, district, or other political subdivision of the
9 state, or any other group or combination acting as a unit.

10 (i) “Prepaid consumer” means a person who purchases prepaid
11 mobile telephony services in a retail transaction.

12 (j) “Prepaid mobile telephony services” means the right to utilize
13 a mobile device authorized by the Federal Communications
14 Commission for mobile telecommunications services or
15 information services, including the download of digital products
16 delivered electronically, content, and ancillary services, or both
17 telecommunications services and information services, that must
18 be purchased in advance of usage in predetermined units or dollars.
19 For these purposes, “telecommunications service” and “information
20 service” have the same meanings as defined in Section 153 of Title
21 47 of the United States Code.

22 (k) “Prepaid MTS provider” means a person that provides
23 prepaid mobile telephony services pursuant to a license issued by
24 the Federal Communications Commission.

25 (l) “Prepaid MTS surcharge” means the surcharge that consists
26 of the emergency telephone users surcharge and the Public Utilities
27 Commission surcharges, as calculated pursuant to subdivision (b)
28 of Section 42010, that is required to be collected by a seller from
29 a prepaid consumer.

30 (m) “Public Utilities Commission surcharges” means surcharges
31 authorized by the Public Utilities Commission to be billed and
32 collected from end-use consumers of wireless communications
33 services, and of which the commission provides the board with
34 notice pursuant to Section 319 of the Public Utilities Code,
35 including:

36 (1) The California High-Cost Fund-A Administrative Committee
37 Fund program surcharge (Section 275.6 of the Public Utilities
38 Code).

(2) The California High-Cost Fund-B Administrative Committee Fund program surcharge (Section 739.3 of the Public Utilities Code).

(3) The Deaf and Disabled Telecommunications Program Administrative Committee Fund surcharge (Section 2881 of the Public Utilities Code).

(4) The California Teleconnect Fund Administrative Committee Fund program surcharge (Section 280 of the Public Utilities Code).

(5) The California Advanced Services Fund program surcharge (Section 281 of the Public Utilities Code).

(6) The Moore Universal Telephone Service Act (Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code).

(7) Public Utilities Commission reimbursement fees imposed pursuant to Chapter 2.5 (commencing with Section 401) of Part 1 of Division 1 of the Public Utilities Code.

(n) “Retail transaction” means the purchase of prepaid mobile telephony services, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business. For these purposes, a “purchase” means any transfer of title or possession, exchange, or barter, conditional or otherwise.

(o) “Seller” means a person that sells prepaid mobile telephony service to a person in a retail transaction.

CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES SURCHARGE

42010. (a) (1) On and after January 1, 2015, a prepaid MTS surcharge shall be imposed on each prepaid consumer and shall be collected by a seller from each prepaid consumer at the time of each retail transaction in this state. The prepaid MTS surcharge shall be imposed as a percentage of the sales price of each retail transaction that occurs in this state.

(2) ~~The~~ *On and after January 1, 2016, the* prepaid MTS surcharge shall be in lieu of any charges imposed pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Section 41001)) and the Public Utilities Commission surcharges for prepaid mobile telephony services.

(b) The prepaid MTS surcharge shall be annually calculated by the board by no later than November 1 of each year commencing November 1, 2014, by adding the following:

(1) The surcharge rate ~~established~~ *reported* pursuant to *subdivision (c) of Section 41030 as of October 1 of each year, which shall be the surcharge rate established for intrastate telephone communication service in this state, by using 78.5 percent of the total charges as being the intrastate portion of the charges. 41030.*

(2) The Public Utilities ~~Commission surcharges, Commission's reimbursement fee and cumulative surcharge, established by the commission~~ *Public Utilities Commission* pursuant to *subdivisions (a) and (b) of Section 319 of the Public Utilities Code, as of October 1 of each year, by using 78.5 percent of the total charges as being the intrastate portion of the charges. Code.*

(c) (1) The board shall post, for each local jurisdiction, the combined total of the rates of prepaid MTS surcharge and the rate or rates of local charges, as calculated pursuant to Section 42012, that each local jurisdiction has adopted, not later than December 1 of each year, on its Internet Web site. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning April 1 following the posting.

(2) Notwithstanding paragraph (1), if a local agency notifies the board pursuant to subdivision ~~(b)~~ *(d)* of Section ~~42012~~ *42101.5* that the posted rate is inaccurate or it no longer imposes a local charge or local charges or that the rate of its local charge or local charges has decreased, the board shall promptly post a recalculated rate that is applicable to the jurisdiction of that local agency. The change shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the local agency notifies the board of the inaccuracy or that it no longer imposes a local charge or that the rate of its local charge has decreased. Nothing in this section modifies the notice obligations of Section 799 of the Public Utilities Code. However, beginning January 1, 2015, the notification and implementation requirements of paragraphs (5) and (6) of subdivision (a) of Section 799 shall not apply to prepaid mobile telephony services.

(3) A seller collecting the prepaid MTS surcharge and local charges pursuant to this part and Part 21.1 (commencing with Section 42100) may rely upon the accuracy of the information

1 posted on the board's Internet Web site in collecting the state
2 surcharge and local charges.

3 (d) Except for amounts retained pursuant to subdivision (e), all
4 amounts of the prepaid MTS surcharge and local charges collected
5 by sellers shall be remitted to the board pursuant to Chapter 3
6 (commencing with Section 42020).

7 (e) A seller shall be permitted to deduct and retain an amount
8 equal to ~~3~~ 2 percent of the amounts that are collected by the seller
9 from prepaid consumers for the prepaid MTS surcharge and local
10 ~~charges.~~ *charges, except in a retail transaction that involves both*
11 *of the following:*

12 (1) *The seller is the provider of prepaid mobile telephony*
13 *services pursuant to Section 224.4 of the Public Utilities Code, or*
14 *a telephone corporation pursuant to Section 234 of the Public*
15 *Utilities Code.*

16 (2) *The seller sells the prepaid mobile telephony services directly*
17 *to the prepaid consumer.*

18 (f) The amount of the combined prepaid MTS surcharge and
19 local charges shall be separately stated on an invoice, receipt, or
20 other similar document that is provided to the prepaid consumer
21 of mobile telephony services by the seller, or otherwise disclosed
22 electronically to the prepaid consumer, at the time of the retail
23 transaction.

24 (g) The prepaid MTS surcharge is required to be collected by
25 a seller and any amount unreturned to the prepaid consumer of
26 mobile telephony services that is not owed as part of the surcharge,
27 but was collected from the prepaid consumer under the
28 representation by the seller that it was owed as part of the
29 surcharge, constitute debts owed by the seller to this state. The
30 local charge shall be collected by a seller, and any amount
31 unreturned to the prepaid consumer of mobile telephony services
32 that is not owed as part of the local charge but that was collected
33 from the prepaid consumer under the representation by the seller
34 that it was owed as part of the local charge constitutes a debt owed
35 by the seller jointly to the state, for purposes of collection on behalf
36 of, and payment to, the local jurisdiction and to the local
37 jurisdiction imposing that local charge.

38 (h) A seller that has collected any amount of prepaid MTS
39 surcharge and local charges in excess of the amount of the
40 surcharge imposed by this part and actually due from a prepaid

1 consumer may refund that amount to the prepaid consumer, even
2 though the surcharge amount has already been paid over to the
3 board and no corresponding credit or refund has yet been secured.
4 Any seller making a refund of any charge to a prepaid consumer
5 may repay therewith the amount of the surcharge paid.

6 (i) (1) Every prepaid consumer of mobile telephony services
7 in this state is liable for the prepaid MTS surcharge and any local
8 charges until they have been paid to this state, except that payment
9 to a seller registered under this part relieves the prepaid consumer
10 from further liability for the surcharge and local charges. Any
11 surcharge collected from a prepaid consumer that has not been
12 remitted to the board shall be a debt owed to the state by the person
13 required to collect and remit the surcharge. Any local charge
14 collected from a prepaid consumer that has not been remitted to
15 the board shall be a debt owed jointly to the state, for purposes of
16 collection on behalf of, and payment to, the local jurisdiction and
17 to the local jurisdiction imposing the local charge by the person
18 required to collect and remit the local charge. Nothing in this part
19 shall impose any obligation upon a seller to take any legal action
20 to enforce the collection of the surcharge or local charge imposed
21 by this section.

22 (2) A credit shall be allowed against, but shall not exceed, the
23 prepaid MTS surcharge and local charges imposed on any prepaid
24 consumer of mobile telephony services by this part to the extent
25 that the prepaid consumer has paid emergency telephone users
26 charges, state utility regulatory commission fees, state universal
27 service charges, or local charges on the purchase to any other state,
28 political subdivision thereof, or the District of Columbia. The credit
29 shall be apportioned to the charges against which it is allowed in
30 proportion to the amounts of those charges.

31 42014. (a) For purposes of this part, a retail transaction occurs
32 in the state under any of the following circumstances:

33 (1) The prepaid consumer makes the retail transaction in person
34 at a business location in the state (point-of-sale transaction).

35 (2) If paragraph (1) is not applicable, the prepaid consumer's
36 address is in the state (known address transaction). A
37 known-address transaction occurs in the state under any of the
38 following circumstances:

39 (A) The retail sale involves shipping of an item to be delivered
40 to, or picked up by, the prepaid consumer at a location in the state.

1 (B) If the prepaid consumer's address is known by the seller to
2 be in the state, including if the seller's records maintained in the
3 ordinary course of business indicate that the prepaid consumer's
4 address is in the state and the records are not made or kept in bad
5 faith.

6 (C) The prepaid consumer provides an address during
7 consummation of the retail transaction that is in the state, including
8 an address provided with respect to the payment instrument if no
9 other address is available and the address is not given in bad faith.

10 (D) The mobile telephone number is associated with a location
11 in this state.

12 (b) (1) A retail transaction shall occur at only one location for
13 purposes of determining local charges. If the retail transaction is
14 a point-of-sale transaction, the consumption of, use of, or access
15 to, the prepaid mobile telephony service shall be presumed to be
16 at that location.

17 (2) If the retail transaction is a known-address transaction, the
18 location shall be as determined in descending order beginning with
19 subparagraph (A) of paragraph (2) of subdivision (a); if
20 subparagraph (A) of that paragraph is inapplicable, then pursuant
21 to subparagraph (B) of that paragraph; if both subparagraphs (A)
22 and (B) of that paragraph are inapplicable, then subparagraph (C)
23 of that paragraph; and if subparagraphs (A), (B), and (C) of that
24 paragraph are inapplicable, then subparagraph (D) of that
25 paragraph. In a known address transaction, the consumption of,
26 use of, or access to, the prepaid mobile telephony service shall be
27 presumed to be at the known address.

28 (c) (1) A seller that relies in good faith on ~~retail location~~
29 ~~information that the board shall provide~~ *provided by the board* to
30 match the location of a point-of-sale transaction to the applicable
31 prepaid MTS surcharge amount and local charges, that collects
32 that amount from the prepaid consumer, and that remits the amount
33 to the board in compliance with this part, shall not be liable for
34 any additional MTS surcharge or local charges and shall not be
35 required to refund any amounts collected and paid to the board to
36 the prepaid consumer.

37 (2) For a known-address transaction, the seller may collect the
38 prepaid MTS surcharge and local charges that correspond to the
39 five-digit postal ZIP Code of the prepaid consumer's address. A
40 seller that, with due diligence and in good faith, relies on credible

1 information to match the five-digit postal ZIP Code of the prepaid
2 consumer's address to the applicable prepaid MTS surcharge and
3 local charges amount, that collects that amount from the prepaid
4 consumer, and that remits the amount to the board in compliance
5 with this part, shall not be liable for any additional MTS surcharge
6 or local charges and shall not be required to refund any amounts
7 collected and paid to the board to the prepaid consumer, even if
8 the five-digit postal ZIP Code of the prepaid consumer's address
9 that the seller uses corresponds to more than one local charge.

10 ~~42016. The prepaid MTS surcharge and local charges are~~
11 ~~imposed on the prepaid consumer of mobile telephony services~~
12 ~~and not on the seller or on any prepaid MTS provider, except that~~
13 ~~the seller shall collect and remit all of the prepaid MTS surcharges~~
14 ~~and local charges pursuant to this part and Part 21.1 (commencing~~
15 ~~with Section 42100).~~

16 42018. (a) Except as provided in subdivisions (b) and (c), if
17 prepaid mobile telephony services are sold in combination with
18 mobile data services or any other services or products for a single
19 price, then the prepaid MTS surcharge and local charges shall
20 apply to the entire price.

21 (b) If prepaid mobile telephone services are sold with a mobile
22 telephone service communication device, commonly termed a
23 cellular telephone, for a single, nonitemized price, then the prepaid
24 MTS surcharge and local charges shall apply to the entire
25 nonitemized price, except if the purchase price for the ~~prepaid~~
26 ~~mobile telephony services~~ *cellular phone* component of the bundled
27 ~~charge and the purchase price of the prepaid mobile telephony~~
28 ~~services component are~~ *is* disclosed to the prepaid consumer on a
29 receipt, invoice, or other written or electronic documentation
30 provided to the prepaid consumer, the prepaid MTS surcharge and
31 local charges may be calculated ~~based upon that amount.~~ *excluding*
32 *the separately stated price of the cellular telephone.*

33 (c) If a minimal amount of prepaid mobile telephony service is
34 sold for a single, nonitemized price with a mobile telephony service
35 communications device the seller may elect not to apply the prepaid
36 MTS surcharge or local charges to the transaction. For these
37 purposes, a service allotment denominated as 10 minutes or less,
38 or five dollars (\$5) or less, is a minimal amount.

CHAPTER 3. ADMINISTRATION

42020. (a) (1) The board shall administer and collect the prepaid MTS surcharge imposed by this part pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)). For purposes of this part, the references in the Fee Collection Procedures Law to “fee” shall include the prepaid MTS surcharge imposed by this part, and references to “feepayer” shall include a person required to pay the surcharge imposed by this part, which includes the seller, who shall be required to register with the board.

(2) Notwithstanding Article 1.1 (commencing with Section 55050) of Chapter 3 of Part 30, any person required, or that elects, to remit amounts due under Part 1 (commencing with Section 6001) by electronic funds transfer pursuant to Article 1.2 (commencing with Section 6479.3) of Chapter 5 of Part 1 shall remit prepaid MTS surcharge amounts due under this section by electronic funds transfer.

(b) (1) The board may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this part, including, but not limited to, collections, reporting, refunds, and appeals.

(2) The board may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(c) The board shall establish procedures to be utilized by a seller to document that a sale is not a retail transaction.

(d) The board shall establish procedures for sharing of information, other than information protected under Section 19542, related to the collection of the prepaid MTS surcharge upon the request of the Public Utilities Commission or the Office of Emergency Services.

1 42021. The board shall establish remittance schedules and
2 methods for payment of the prepaid MTS surcharge that utilize
3 existing methods established under the Sales and Use Tax Law
4 (Part 1 (commencing with Section 6001)), including all of the
5 following:

6 (a) The prepaid MTS surcharge, minus the amount retained by
7 the seller pursuant to subdivision (e) of Section 42010, is due and
8 payable to the board quarterly on or before the last day of the
9 month following each calendar quarter.

10 (b) On or before the last day of the month following each
11 calendar quarter, a return for the preceding calendar quarter shall
12 be filed using electronic media with the board.

13 (c) Returns shall be authenticated in a form or pursuant to
14 methods as may be prescribed by the board.

15 42022. Every seller shall register with the board. The board
16 shall establish a method for registration of sellers under this part
17 that utilizes the existing registration process for a seller's permit
18 established pursuant to Section 6066 of the Sales and Use Tax
19 Law (Part 1 (commencing with Section 6001)). Every application
20 for registration shall be made upon a form prescribed by the board
21 and shall set forth the name under which the applicant transacts
22 or intends to transact business, the location of its place or places
23 of business, and such other information as the board may require.
24 An application for registration shall be authenticated in a form or
25 pursuant to methods as may be prescribed by the board.

26 42023. (a) The Prepaid Mobile Telephony Services Surcharge
27 Fund is hereby created in the State Treasury. The Prepaid MTS
28 911 Account and the Prepaid MTS PUC Account are hereby
29 created in the fund. The Prepaid Mobile Telephony Services
30 Surcharge Fund shall consist of all surcharges, interest, penalties,
31 and other amounts collected and paid to the board pursuant to this
32 part, less payments of refunds and reimbursements to the board
33 for expenses incurred in the administration and collection of the
34 prepaid MTS surcharge.

35 (b) All moneys in the Prepaid Mobile Telephony Services
36 Surcharge Fund attributable to the prepaid MTS surcharge shall
37 be deposited as follows:

38 (1) That portion of the prepaid MTS surcharge that is for the
39 emergency telephone users surcharge shall be deposited into the
40 Prepaid MTS 911 Account.

(2) That portion of the prepaid MTS surcharge that is for the Public Utilities Commission surcharges shall be deposited into the Prepaid MTS PUC Account.

(c) Moneys in the Prepaid MTS 911 Account and the Prepaid MTS PUC Account may be appropriated by the Legislature only for the purposes for which the moneys were collected. All moneys collected pursuant to this part shall be allocated only to the entities specified in this section and shall not be used for any other purpose, including, but not limited to, loans, transfers, or uses for any other purpose, fund, or account.

42024. (a) This part shall remain in effect only until January 1, ~~2020~~, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2020~~, 2018, deletes or extends that date.

(b) *This part shall remain applicable for the collection of the surcharge, the liability for which accrued prior to January 1, 2015; the making of any refunds and the effecting of any credits; the disposition of money collected; and the commencement of any action or proceeding pursuant to this part.*

SEC. 11. Part 21.1 (commencing with Section 42100) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21.1. LOCAL PREPAID MOBILE TELEPHONY
SERVICES COLLECTION ACT

42100. (a) This part shall be known and may be cited as the Local Prepaid Mobile Telephony Services Collection Act.

(b) The Legislature finds and declares all of the following:

(1) Maintaining effective and efficient communications services, 911 emergency systems, communications-related public policy programs to promote universal service, and various local programs across the state benefit all persons with access to the telecommunications system.

(2) Providers of end-use communications services, including providers of mobile voice telecommunications services, which the Federal Communications Commission terms mobile telephony service, are required to collect and remit utility users taxes and local 911 or access charges (local charges) imposed by over 150 cities and counties in California on end-users of such mobile telephony services, as required by existing state or local law.

1 (3) Local charges on telecommunication services represent an
2 important source of tax revenue for many cities and counties and
3 are used to pay for such essential governmental services as public
4 safety, streets, parks, libraries, senior centers, and many more.

5 (4) Prepaid mobile telephony services are an important and
6 growing segment of the communications industry. Prepaid mobile
7 telephony services, unlike postpaid mobile telephony services, are
8 frequently sold by a third-party seller that is not the provider of
9 mobile telephony services, and collecting local charges from
10 prepaid consumers of mobile telephony services at the time of the
11 retail transaction is necessary and the most efficient and
12 competitively neutral means for the collection of those local
13 charges.

14 (5) The collection of prepaid mobile telephony services by
15 third-party sellers and the remittance of those local charges to the
16 board involves administrative costs and responsibilities that are
17 unique to prepaid mobile telephony services, and therefore justify
18 unique reimbursement and tax rate simplification measures, which
19 are fair and reasonable.

20 (c) It is a matter of statewide concern that the local charges for
21 local prepaid mobile telephony services be collected in a uniform
22 manner in order for the collection to be fair and uniform on a
23 statewide basis.

24 (d) It is the intention of the Legislature that this part shall
25 preempt the provisions pertaining to the tax or charge rate, base,
26 and method of collection contained in all local ordinances, rules,
27 or regulations concerning the imposition of a local charge upon
28 the consumption of prepaid mobile telephony services to the extent
29 those provisions are inconsistent with the provisions of this part
30 and Part 21 (commencing with Section 42000). It is not the intent
31 of the Legislature to otherwise preempt, limit, or affect the general
32 authority of local jurisdictions to impose a utility user tax, local
33 911 charge, or any other local charges.

34 42101. For purposes of this part, all of the following definitions
35 shall apply:

36 (a) "Local agency" means a city, county, or city and county,
37 which includes a charter city, county, or city and county.

38 (b) "Local charge" means the utility user taxes as described in
39 Section 42102, and charges for access to communication services

1 or to local “911” emergency telephone systems, as described in
2 Section 42102.5.

3 (c) “Ordinance” refers to an ordinance of a local agency
4 imposing a local charge, including any local enactment relating to
5 the filing of a refund or a claim arising under the ordinance.

6 (d) “Prepaid mobile telephony services” has the same meaning
7 as that term is defined in the Prepaid Mobile Telephony Services
8 Surcharge Collection Act (Part 21 (commencing with Section
9 42000)).

10 42101.5. (a) On and after January 1, 2015, a local charge
11 imposed by a local agency on prepaid mobile telephony services
12 shall be collected from the prepaid consumer by a seller at the
13 same time and in the same manner as the prepaid MTS surcharge
14 is collected under Part 21 (commencing with Section 42000) if,
15 on or before September 1, 2014, the local agency shall enter into
16 a contract with the board for the board to perform the functions
17 set forth in Section 42103. In the contract, the local agency shall:
18 (1) certify to the board that its ordinance applies its local charge
19 to prepaid mobile telephony services and that the local agency
20 agrees to indemnify, and hold and save harmless, the board, its
21 officers, agents, and employees for any and all liability for damages
22 that may result from collection pursuant to the contract; and, (2)
23 certify to the board the amount of the local 911 charge, as set out
24 in Section 42102.5, or the applicable tiered rate for a utility user
25 tax, as set out in Section 42102.

26 (b) In the event that a local agency adopts a new local charge
27 that is imposed on prepaid mobile telephony services after
28 September 1, 2014, the local agency shall enter into a contract
29 with the board to perform the functions set forth in Section 42103,
30 on or before December 1, with collection of the local charge to
31 commence April 1 of the next calendar year. In the contract, the
32 local agency shall certify to the board: (1) that its ordinance applies
33 its local charge to prepaid mobile telephony services and that the
34 local agency agrees to indemnify, and hold and save harmless, the
35 board, its officers, agents, and employees for any and all liability
36 for damages that may result from collection pursuant to the
37 contract; and, (2) the amount of the local 911 charge, as set out in
38 Section 42102.5, or the applicable tiered rate for a utility user tax,
39 as set out in Section 42102.

1 (c) In the event that a local agency increases its local charge
2 after September 1, 2014, the local agency shall provide the board
3 with written notice of the increased local charge on or before
4 December 1, with collection of the local charge to commence April
5 1 of the next calendar year.

6 (d) In the event that a local agency reduces or eliminates a local
7 charge on prepaid mobile telephony services, the local agency
8 shall provide the board with written notice pursuant to subdivision
9 (c) of Section 42010.

10 (e) Notwithstanding subdivision (a), through and including
11 December 31, 2014, a prepaid MTS provider may elect to remit
12 the local charge to the appropriate local taxing jurisdiction based
13 on the applicable tax rate of Section 42102, Section 42102.5, or
14 both, and those remittances shall be deemed to be in full
15 compliance with the local ordinance imposing a local charge on
16 prepaid mobile telephony service.

17 42102. (a) Notwithstanding any other law, on and after January
18 1, 2015, the authority of a city, county, or city and county, which
19 includes a charter city, county, or city and county, to impose a
20 utility user tax on the consumption of prepaid mobile telephony
21 service in the city, county, or city and county at the rate as specified
22 in an ordinance authorized pursuant to Section 7284.2 or any other
23 law is suspended, and the utility user tax rate to be applied instead
24 during the period under any ordinance as so adopted is the
25 applicable of the following:

26 (1) In the case of a city, county, or city and county that has
27 adopted an ordinance to impose a utility user tax on the
28 consumption of prepaid communication services in the city, county,
29 or city and county at the rate of less than 1.5 percent, the rate shall
30 be 0 percent.

31 (2) In the case of a city, county, or city and county that has
32 adopted an ordinance to impose a utility user tax on the
33 consumption of prepaid communication services in the city, county,
34 or city and county at the rate of 1.5 percent or more but less than
35 2.5 percent, the rate shall be 1.5 percent.

36 (3) In the case of a city, county, or city and county that has
37 adopted an ordinance to impose a utility user tax on the
38 consumption of prepaid communication services in the city, county,
39 or city and county at the rate of 2.5 percent or more but less than
40 3.5 percent, the rate shall be 2.5 percent.

1 (4) In the case of a city, county, or city and county that has
2 adopted an ordinance to impose a utility user tax on the
3 consumption of prepaid communication services in the city, county,
4 or city and county at the rate of 3.5 percent or more but less than
5 4.5 percent, the rate shall be 3.5 percent.

6 (5) In the case of a city, county, or city and county that has
7 adopted an ordinance to impose a utility user tax on the
8 consumption of prepaid communication services in the city, county,
9 or city and county at the rate of 4.5 percent or more but less than
10 5.5 percent, the rate shall be 4.5 percent.

11 (6) In the case of a city, county, or city and county that has
12 adopted an ordinance to impose a utility user tax on the
13 consumption of prepaid communication services in the city, county,
14 or city and county at the rate of 5.5 percent or more but less than
15 6.5 percent, the rate shall be 5.5 percent.

16 (7) In the case of a city, county, or city and county that has
17 adopted an ordinance to impose a utility user tax on the
18 consumption of prepaid communication services in the city, county,
19 or city and county at the rate of 6.5 percent or more but less than
20 7.5 percent, the rate shall be 6.5 percent.

21 (8) In the case of a city, county, or city and county that has
22 adopted an ordinance to impose a utility user tax on the
23 consumption of prepaid communication services in the city, county,
24 or city and county at the rate of 7.5 percent or more but less than
25 9 percent, the rate shall be 7.5 percent.

26 (9) In the case of a city, county, or city and county that has
27 adopted an ordinance to impose a utility user tax on the
28 consumption of prepaid communication services in the city, county,
29 or city and county at the rate of 9 percent or more, the rate shall
30 be 9 percent.

31 (b) Subdivision (a) is a self-executing provision that operates
32 without regard to any decision or act on the part of any city, county,
33 or city and county. A change in a utility user tax rate resulting
34 from either the suspension of, or the termination of the suspension
35 of, a utility user rate adopted by a city, county, or city and county
36 set forth in subdivision (a) is not subject to voter approval under
37 either statute or Article XIII C of the California Constitution.

38 (c) Notwithstanding subdivision (a), a city, county, or city and
39 county may levy, increase, or extend a utility user tax at any rate
40 on the consumption of communication services, including a utility

1 user tax on the consumption of prepaid mobile telephony service,
2 except that during the period on and after January 1, 2015, any
3 utility user tax rate on prepaid mobile telephony service under any
4 ordinance as so adopted shall be the applicable rate specified in
5 subdivision (a).

6 (d) On and after January 1, 2015, this part shall be all of the
7 following:

8 (1) The exclusive method for both of the following:

9 (A) Collecting the local utility user taxes, local 911 charges,
10 and any other local charges imposed on consumers using prepaid
11 mobile telephony services.

12 (B) Defining the scope of the tax or charge with respect to
13 prepaid mobile telephony services.

14 (2) The complete substitute for the utility user tax rate set out
15 in the local ordinance with the applicable tiered rate as established
16 by the Legislature.

17 (3) This part shall not preempt, limit, or affect the general
18 authority of local jurisdictions to impose a utility user tax, local
19 911 charge, or any other local charges.

20 42102.5. (a) Notwithstanding any other law, on and after
21 January 1, 2015, the authority of a city, county, or city and county,
22 which includes a charter city, county, or city and county, to impose
23 a charge, that applies to prepaid mobile telephony service, for
24 access to communication services or access to local “911”
25 emergency telephone systems in the city, county, or city and county
26 at the rate as specified in an ordinance is suspended, and the rate
27 to be applied instead during that period under any ordinance as so
28 adopted is the applicable of the following:

29 (1) In the case of a city, county, or city and county that has
30 adopted an ordinance to impose a charge that applies to prepaid
31 mobile telephony service for access to communication services or
32 access to local “911” emergency telephone systems in the city,
33 county, or city and county at the rate of less than ____ dollars
34 (\$____) per month per access line, including any adjustments for
35 inflation, the rate shall be 0 percent.

36 (2) In the case of a city, county, or city and county that has
37 adopted an ordinance to impose a charge that applies to prepaid
38 mobile telephony service for access to communication services or
39 access to local “911” emergency telephone systems in the city,
40 county, or city and county at the rate of ____ dollars (\$____) per

1 month per access line, including any adjustments for inflation, or
2 more but less than ____ dollars (\$____) per month per access line,
3 including any adjustments for inflation, the rate shall be the
4 percentage obtained by dividing ____ by fifty, rounded up to the
5 nearest one-tenth of 1 percent.

6 (b) Subdivision (a) is a self-executing provision that operates
7 without regard to any decision or act on the part of any city, county,
8 or city and county. A change in an access charge rate resulting
9 from either the suspension of, or the termination of the suspension
10 of, a charge adopted by a city, county, or city and county set forth
11 in subdivision (a) is not subject to voter approval under either
12 statute or Article XIII C of the California Constitution.

13 (c) Notwithstanding subdivision (a), a city, county, or city and
14 county may levy, increase, or extend a charge at any rate, that
15 applies to prepaid mobile telephony services, for access to
16 communication services or access to local “911” emergency
17 telephone systems in the city, county, or city and county, except
18 that during the period on and after January 1, 2015, any charge on
19 prepaid mobile telephony service under any ordinance as so
20 adopted shall be the applicable rate specified in subdivision (a).

21 42103. (a) The board shall perform all functions incident to
22 the collection of the local charges of a city, county, or a city and
23 county, and shall collect and administer the local charges in the
24 manner prescribed for the collection of the prepaid MTS surcharge
25 in the Prepaid Mobile Telephony Services Surcharge Collection
26 Act (Part 21 (commencing with Section 42000)), subject to the
27 limitations set forth in Section 42105. *For purposes of this part,*
28 *the references in the Fee Collection Procedures Law to “fee” shall*
29 *include the local charge imposed by this part, and references to*
30 *“feepayer” shall include a person required to pay the local charge*
31 *imposed by this part, which includes the seller.*

32 (b) All local charges collected by the board shall be deposited
33 in the Local Charges for Prepaid Mobile Telephony Services Fund
34 which is hereby created in the State Treasury, and shall be held in
35 trust for the local taxing jurisdiction, and shall not be used for any
36 other purpose. Local charges shall consist of all taxes, charges,
37 interest, penalties, and other amounts collected and paid to the
38 board, less payments for refunds and reimbursement to the board
39 for expenses incurred in the administration and collection of the
40 local charges. The board shall transmit the funds to the local

1 jurisdictions periodically as promptly as feasible. The transmittals
2 required under this section shall be made at least once in each
3 calendar quarter. The board shall furnish a quarterly statement
4 indicating the amounts paid and withheld.

5 (c) The board shall prescribe and adopt rules and regulations as
6 may be necessary or desirable for the administration and collection
7 of local charges and the distribution of the local charges collected.

8 (d) The board's audit duties under this part shall be limited to
9 verification that the seller complied with this part.

10 (e) The board may contract with a third party for purposes of
11 this part, solely in connection with the following board duties:

12 (1) To allocate and transmit collected local charges in the *Local*
13 *Charges for Prepaid Mobile Telephony Services-Surcharge Fund*
14 pursuant to subdivision (b) to the appropriate local jurisdictions.

15 (2) To audit proper collection and remittance of the local charge
16 pursuant to this part.

17 (3) To respond to requests from sellers, consumers, boards, and
18 others regarding issues pertaining to local charges that are within
19 the scope of the board's duties.

20 (f) For purposes of this part, any third-party contract under
21 subdivision (e) shall be subject to the following limitations:

22 (1) Any third party shall, to the same extent as the board, be
23 subject to subdivision (b) of Section 55381, relating to unlawful
24 disclosures.

25 (2) A third-party contract shall not provide, in whole or in part,
26 in any manner a contingent fee arrangement as payment for services
27 rendered. For purposes of this section, "contingent fee" includes,
28 but is not limited to, a fee that is based on a percentage of the tax
29 liability reported on a return, a fee that is based on a percentage
30 of the taxes owed, or a fee that depends on the specific tax result
31 attained.

32 42105. (a) The city, county, or city and county that has adopted
33 an ordinance to impose a local charge that applies to prepaid mobile
34 telephony service shall be solely responsible for:

35 (1) Defending any claim regarding the validity of the ordinance
36 in its application to prepaid mobile telephony service.

37 (2) Interpreting any provision of the ordinance, except to the
38 extent specifically superseded by this statute.

39 (3) Responding to any claim for refund by a customer arising
40 under subdivision (b), (c), or (d). The claim shall be processed in

1 accordance with the provisions of the local enactment that allows
2 the claim to be filed.

3 (4) Certifying that the city, county, or city and county ordinance
4 applies the local charge to prepaid mobile telephony services and
5 agreeing to indemnify and hold harmless the board, its officers,
6 agents, and employees for any and all liability for damages that
7 may result from collection of the local charge.

8 (5) Reallocation of local charges as a result of correcting errors
9 relating to the location of the point of sale of a seller or the known
10 address of a consumer, for up to two past quarters from the date
11 of knowledge.

12 (b) A consumer may rebut the presumed location of the retail
13 transaction to the city or county clerk of the local jurisdiction, as
14 provided in subdivision (b) of Section 42014, by filing a claim and
15 declaration under penalty of perjury on a form established by the
16 city or county clerk of the local jurisdiction indicating the actual
17 location of the retail sale. The claim shall be processed in
18 accordance with the provisions of the local enactment that allows
19 the claim to be filed.

20 (c) A consumer that is exempt from the local charge under the
21 local enactment may file a claim for a refund from the local
22 jurisdiction in accordance with the refund provisions of the local
23 enactment that allows the claim to be filed.

24 (d) In connection with any actions or claims relating to or arising
25 from the invalidity of a local tax ordinance, in whole or in part,
26 the seller shall not be liable to any consumer as a consequence of
27 collecting the tax. In the event a local jurisdiction is ordered to
28 refund the tax, it shall be the sole responsibility of the local
29 jurisdiction to refund the tax. In any action seeking to enjoin
30 collection of a local charge by a seller, in any action seeking
31 declaratory relief concerning a local charge, in any action seeking
32 a refund of a local charge, or in any action seeking to otherwise
33 invalidate a local charge, the sole necessary party defendant in the
34 action shall be the local jurisdiction on whose behalf the local
35 charge is collected, and the seller collecting the local charge shall
36 not be named as a party in the action. There shall be no recovery
37 from the state for the imposition of any unconstitutional or
38 otherwise invalid local charge that is collected pursuant to this
39 part.

40 42106. (a) For purposes of this section:

1 (1) "Quarterly local charges" means the total amount of local
2 charges transmitted by the board to a city, county, or city and
3 county for a calendar quarter.

4 (2) "Refund" means the amount of local charges deducted by
5 the board from a city's, county's, or city and county's quarterly
6 local charges in order to pay the city's, county's, or city and
7 county's share of a local charge refund due to one taxpayer.

8 (3) "Offset portion" means that portion of the refund which
9 exceeds the greater of fifty thousand dollars (\$50,000) or 20 percent
10 of the city's, county's, or city and county's quarterly local charges.

11 (b) Except as provided in subdivision (c), if the board has
12 deducted a refund from a city's, county's, or city and county's
13 quarterly local charges which includes an offset portion, then the
14 following provisions apply:

15 (1) Within three months after the board has deducted an offset
16 portion, the city, county, or city and county may request the board
17 to transmit the offset portion to the city, county, or city and county.

18 (2) As promptly as feasible after the board receives the city's,
19 county's, or city and county's request, the board shall transmit to
20 the city, county, or city and county the offset portion as part of the
21 board's periodic transmittal of local charges.

22 (3) The board shall thereafter deduct a pro rata share of the
23 offset portion from future transmittals of local charges to the city,
24 county, or city and county over a period to be determined by the
25 board, but not less than two calendar quarters and not more than
26 eight calendar quarters, until the entire amount of the offset portion
27 has been deducted.

28 (c) The board shall not transmit the offset portion of the refund
29 to the city, county, or city and county if that transmittal would
30 reduce or delay either the board's payment of the refund to the
31 taxpayer or the board's periodic transmittals of local charges to
32 other cities, counties, or city and county.

33 42107. The city, county, or city and county shall pay to the
34 board its costs of preparation to administer and collect local
35 charges. The city, county, or city and county shall pay costs
36 monthly as are incurred and billed by the board. The costs include
37 all preparatory costs, including costs of developing procedures,
38 programming for data processing, developing and adopting
39 appropriate regulations, designing and printing of forms,
40 developing instructions for the board's staff and for taxpayers, and

1 other necessary preparatory costs which shall include the board's
2 direct and indirect costs as specified by Section 11256 of the
3 Government Code. Any disputes as to the amount of preparatory
4 costs incurred shall be resolved by the Director of Finance, and
5 his or her decision shall be final.

6 42109. The board shall annually prepare a report showing the
7 amount of both reimbursed and unreimbursed costs incurred by it
8 in administering the collection of local charges pursuant to this
9 part.

10 42110. (a) Notwithstanding Section 55381, it is unlawful for
11 any person, other than an officer or employee of a county, city and
12 county, city, or district, who obtains access to information
13 contained in, or derived from, prepaid mobile telephony services
14 surcharge and local charge records of the board pursuant to
15 subdivision (b), to retain that information after that person's
16 contract with the county, city and county, city, or district has
17 expired.

18 (b) (1) When requested by resolution of the legislative body of
19 any county, city and county, city, or district, the board shall permit
20 any duly authorized officer or employee of the county, city and
21 county, city, or district, or other person designated by that
22 resolution, to examine all of the prepaid mobile telephony services
23 surcharge and local charge records of the board pertaining to the
24 ascertainment of those prepaid mobile telephony services surcharge
25 and local charges to be collected for the county, city and county,
26 city, or district by the board pursuant to contract entered into
27 between the board and the county, city and county, city, or district
28 pursuant to this part. Except as otherwise provided in this section,
29 this subdivision does not allow any officer, employee, or other
30 person authorized or designated by a county, city and county, city,
31 or district to examine any sales or transactions and use tax records
32 of any taxpayer. The costs that are incurred by the board in
33 complying with a request made pursuant to this subdivision shall
34 be deducted by the board from those revenues collected by the
35 board on behalf of the county, city and county, city, or district
36 making the request.

37 (2) The resolution of the legislative body of the county, city and
38 county, city, or district shall certify that any person designated by
39 the resolution, other than an officer or employee, meets all of the
40 following conditions:

1 (A) Has an existing contract with the county, city and county,
2 city, or district to examine those prepaid mobile telephony services
3 surcharge and local charge records.

4 (B) Is required by that contract to disclose information contained
5 in, or derived from, those prepaid mobile telephony services
6 surcharge and local charge records only to an officer or employee
7 of the county, city and county, city, or district who is authorized
8 by the resolution to examine the information.

9 (C) Is prohibited by that contract from performing consulting
10 services for a seller during the term of that contract.

11 (D) Is prohibited by that contract from retaining the information
12 contained in, or derived from, those prepaid mobile telephony
13 services surcharge and local charge records, after that contract has
14 expired.

15 (3) Information obtained by examination of board records
16 pursuant to this subdivision shall be used only for purposes related
17 to the collection of the prepaid mobile telephony services surcharge
18 and local charges by the board pursuant to the contract, or for
19 purposes related to other governmental functions of the county,
20 city and county, city, or district set forth in the resolution.

21 (c) If the board believes that any information obtained pursuant
22 to subdivision (b) has been disclosed to any person not authorized
23 or designated by the resolution of the legislative body of the county,
24 city and county, city, or district, or has been used for purposes not
25 permitted by subdivision (b), the board may impose conditions on
26 access to its local charge records that the board considers
27 reasonable, in order to protect the confidentiality of those records.

28 (d) Predecessors, successors, receivers, trustees, executors,
29 administrators, assignees, and guarantors, if directly interested,
30 may be given information as to the items included in the measure
31 and amounts of any unpaid local charges or amounts of local
32 charges required to be collected, interest, and penalties.

33 42111. (a) This part shall remain in effect only until January
34 1, ~~2020~~, 2018, and as of that date is repealed, unless a later enacted
35 statute, that is enacted before January 1, ~~2020~~, 2018, deletes or
36 extends that date.

37 (b) *This part shall remain applicable for the collection of the*
38 *surcharge, the liability for which accrued prior to January 1, 2015;*
39 *the making of any refunds and the effecting of any credits; the*

1 *disposition of money collected; and the commencement of any*
2 *action or proceeding pursuant to this part.*

3 SEC. 12. No inference shall be drawn from the enactment of
4 this act with respect to any remittance requirements of a prepaid
5 MTS provider pursuant to the law as it existed prior to the
6 enactment of this act. Additionally, nothing in this act shall affect
7 any remittance requirements of a prepaid MTS provider for any
8 service other than prepaid mobile telephony services. Nothing in
9 this act shall affect the federal remittance requirements of a prepaid
10 MTS provider.

11 SEC. 13. It is the intent of the Legislature that the remittance
12 obligations of a prepaid MTS provider, relating to emergency
13 telephone users surcharge and any charges imposed by the Public
14 Utilities Commission pursuant to Chapter 2.5 (commencing with
15 Section 401) of Part 1 of Division 1 of the Public Utilities Code
16 or for purposes of the universal services programs, shall continue
17 to remain subject to the law existing prior to the effective date of
18 this act until January 1, 2016. However, the law existing prior to
19 the effective date of this act shall remain applicable for each of
20 the following:

21 (a) The collection of surcharges, the liability for which accrued
22 prior to January 1, 2015.

23 (b) The making of any refunds and the effecting of any credits.

24 (c) The disposition of money collected.

25 (d) The commencement of any action or proceeding pursuant
26 to this part.

27 SEC. 14. *It is the intent of the Legislature that prepaid*
28 *customers, who qualify for the Universal Lifeline Telephone*
29 *Service, shall not pay the prepaid MTS surcharge, pursuant to*
30 *Part 21 (commencing with Section 42000) of Division 2 of the*
31 *Revenue and Taxation Code, when purchasing prepaid mobile*
32 *telephony services at a carrier-owned retail location.*

33 ~~SEC. 14.~~

34 SEC. 15. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 ~~SEC. 15.~~

4 *SEC. 16.* This act is an urgency statute necessary for the
5 immediate preservation of the public peace, health, or safety within
6 the meaning of Article IV of the Constitution and shall go into
7 immediate effect. The facts constituting the necessity are:

8 In order to provide a standardized collection mechanism as soon
9 as possible by which state and local charges are collected from
10 end-users of prepaid mobile telephony services, thereby permitting
11 needed financial support for programs necessary to serve the public
12 or telecommunications users, it is necessary that this act take effect
13 immediately.

O